

UNIFORM EASEMENT RELOCATION ACT

2022 GENERAL SESSION

STATE OF UTAH

Chief Sponsor: V. Lowry Snow

Senate Sponsor: _____

LONG TITLE

General Description:

This bill enacts the Uniform Easement Relocation Act.

Highlighted Provisions:

This bill:

- ▶ defines terms;
- ▶ addresses the applicability of the Uniform Easement Relocation Act (Act) to certain easements;
- ▶ excludes certain easements from relocation under the Act;
- ▶ establishes the right of a property owner to relocate an easement in certain circumstances;
- ▶ allows a property owner to commence a civil action to relocate an easement;
- ▶ provides the requirements for commencing a civil action to relocate an easement;
- ▶ addresses a court order for relocation of an easement;
- ▶ requires the parties to a civil action for easement relocation to act in good faith in facilitating relocation;
- ▶ addresses when a proposed easement relocation is considered to be final and complete;
- ▶ addresses the effect of an easement relocation under the Act;
- ▶ provides that the right of a property to relocate an easement under the Act cannot be waived, excluded, or restricted by agreement;



- 28 ▶ provides that the law should be applied and construed to promote uniformity with
- 29 other states that enact the Act;
- 30 ▶ contains a provision on the Act's relation to the Electronic Signatures in Global
- 31 National Commerce Act;
- 32 ▶ provides that the Act applies to an easement created before, on, or after the effective
- 33 date of this bill; and
- 34 ▶ provides a severability clause.

35 **Money Appropriated in this Bill:**

36 None

37 **Other Special Clauses:**

38 None

39 **Utah Code Sections Affected:**

40 ENACTS:

- 41 **57-13c-101**, Utah Code Annotated 1953
- 42 **57-13c-102**, Utah Code Annotated 1953
- 43 **57-13c-103**, Utah Code Annotated 1953
- 44 **57-13c-104**, Utah Code Annotated 1953
- 45 **57-13c-105**, Utah Code Annotated 1953
- 46 **57-13c-106**, Utah Code Annotated 1953
- 47 **57-13c-107**, Utah Code Annotated 1953
- 48 **57-13c-108**, Utah Code Annotated 1953
- 49 **57-13c-109**, Utah Code Annotated 1953
- 50 **57-13c-110**, Utah Code Annotated 1953
- 51 **57-13c-111**, Utah Code Annotated 1953
- 52 **57-13c-112**, Utah Code Annotated 1953
- 53 **57-13c-113**, Utah Code Annotated 1953
- 54 **57-13c-114**, Utah Code Annotated 1953



56 *Be it enacted by the Legislature of the state of Utah:*

57 Section 1. Section **57-13c-101** is enacted to read:

58 **CHAPTER 13c. UNIFORM EASEMENT RELOCATION ACT**

59 **57-13c-101. Definitions.**60 As used in this chapter:61 (1) "Appurtenant easement" means an easement tied to, or dependent on, ownership or
62 occupancy of a unit or a parcel of real property.63 (2) "Common-interest community" means:64 (a) an association of unit owners, as defined in Section [57-8-3](#);65 (b) an association, as defined in Section [57-8a-102](#); or66 (c) a cooperative, as defined in Section [57-23-2](#).67 (3) "Conservation easement" means a nonpossessory property interest created for one
68 or more of the following conservation purposes:69 (a) retaining or protecting the natural, scenic, wildlife, wildlife-habitat, biological,
70 ecological, or open-space values of real property;71 (b) ensuring the availability of real property for agricultural, forest,
72 outdoor-recreational, or open-space uses;73 (c) protecting natural resources, including wetlands, grasslands, and riparian areas;74 (d) maintaining or enhancing air or water quality;75 (e) preserving the historical, architectural, archeological, paleontological, or cultural
76 aspects of real property; or77 (f) any other purpose under Chapter 18, Land Conservation Easement Act.78 (4) "Dominant estate" means an estate or interest in real property benefitted by an
79 appurtenant easement.80 (5) "Easement" means a nonpossessory property interest that:81 (a) provides a right to enter, use, or enjoy real property owned by or in the possession
82 of another; and83 (b) imposes on the owner or possessor a duty not to interfere with the entry, use, or
84 enjoyment permitted by the instrument creating the easement or, in the case of an easement not
85 established by express grant or reservation, the entry, use, or enjoyment authorized by law.86 (6) "Easement holder" means:87 (a) in the case of an appurtenant easement, the dominant estate owner; or88 (b) in the case of an easement in gross, a public-utility easement, a conservation
89 easement, or a negative easement, the grantee of the easement or a successor.

90 (7) "Easement in gross" means an easement not tied to, or dependent on, ownership or
91 occupancy of a unit or a parcel of real property.

92 (8) "Lessee of record" means a person holding a lessee's interest under a recorded lease
93 or memorandum of lease.

94 (9) "Negative easement" means a nonpossessory property interest whose primary
95 purpose is to impose on a servient estate owner a duty not to engage in a specified use of the
96 estate.

97 (10) "Person" means an individual, an estate, a business or a nonprofit entity, a public
98 corporation, a government or governmental subdivision, an agency, or an instrumentality, or
99 other legal entity.

100 (11) (a) "Public-utility easement" means a nonpossessory property interest in which the
101 easement holder is a publicly regulated or publicly owned utility under federal law or a law of
102 this state or a municipality.

103 (b) "Public-utility easement" includes an easement benefitting an intrastate utility, an
104 interstate utility, or a utility cooperative.

105 (12) (a) "Real property" means an estate or interest in, over, or under land, including
106 structures, fixtures, and other things that by custom, usage, or law pass with a conveyance of
107 land whether or not described or mentioned in the contract of sale or instrument of conveyance.

108 (b) "Real property" includes:

109 (i) the interest of a lessor and lessee; and

110 (ii) an interest in a common-interest community, unless the interest is personal property
111 under Chapter 23, Real Estate Cooperative Marketing Act.

112 (13) "Record", used as a noun, means information that is inscribed on a tangible
113 medium or that is stored in an electronic or other medium and is retrievable in perceivable
114 form.

115 (14) (a) "Security instrument" means a mortgage, a deed of trust, a security deed, a
116 contract for deed, a lease, or other record that creates or provides for an interest in real property
117 to secure payment or performance of an obligation, whether by acquisition or retention of a
118 lien, a lessor's interest under a lease, or title to the real property.

119 (b) "Security instrument" includes:

120 (i) a security instrument that also creates or provides for a security interest in personal

121 property;

122 (ii) a modification or amendment of a security instrument; and

123 (iii) a record creating a lien on real property to secure an obligation under a covenant
124 running with the real property or owed by a unit owner in a common-interest community.

125 (15) "Security-interest holder of record" means a person holding an interest in real
126 property created by a recorded security instrument.

127 (16) "Servient estate" means an estate or interest in real property that is burdened by an
128 easement.

129 (17) "Title evidence" means a title insurance policy, a preliminary title report or binder,
130 a title insurance commitment, an abstract of title, an attorney's opinion of title based on
131 examination of public records or an abstract of title, or any other means of reporting the state of
132 title to real property that is customary in the locality.

133 (18) "Unit" means a physical portion of a common-interest community designated for
134 separate ownership or occupancy with boundaries described in a declaration establishing the
135 common-interest community.

136 (19) (a) "Utility cooperative" means a non-profit entity whose purpose is to deliver a
137 utility service, such as electricity, oil, natural gas, water, sanitary sewer, storm water, or
138 telecommunications, to the non-profit entity's customers or members.

139 (b) "Utility cooperative" includes an electric cooperative, a rural electric cooperative, a
140 rural water district, and a rural water association.

141 Section 2. Section **57-13c-102** is enacted to read:

142 **57-13c-102. Scope -- Exclusions.**

143 (1) Except as otherwise provided in Subsection (2), this chapter applies to an easement
144 established:

145 (a) by express grant or reservation; or

146 (b) by prescription, implication, necessity, estoppel, or other method.

147 (2) This chapter may not be used to relocate:

148 (a) a public-utility easement, a conservation easement, or a negative easement; or

149 (b) an easement if the proposed location would:

150 (i) encroach on an area of an estate burdened by a conservation easement; or

151 (ii) interfere with the use or enjoyment of a public-utility easement or an easement

152 appurtenant to a conservation easement.

153 (3) This chapter does not apply to relocation of an easement by consent.

154 Section 3. Section **57-13c-103** is enacted to read:

155 **57-13c-103. Right of servient estate owner to relocate easement.**

156 A servient estate owner may relocate an easement under this chapter only if the
157 relocation does not materially:

158 (1) lessen the utility of the easement;

159 (2) after the relocation, increase the burden on the easement holder in the easement
160 holder's reasonable use and enjoyment of the easement;

161 (3) impair an affirmative, easement-related purpose for which the easement was
162 created;

163 (4) during or after the relocation, impair the safety of the easement holder or another
164 person entitled to use and enjoy the easement;

165 (5) during the relocation, disrupt the use and enjoyment of the easement by the
166 easement holder or another person entitled to use and enjoy the easement, unless the servient
167 estate owner substantially mitigates the duration and nature of the disruption;

168 (6) impair the physical condition, use, or value of the dominant estate or improvements
169 on the dominant estate;

170 (7) impair the value of the collateral of a security-interest holder of record in the
171 servient estate or dominant estate;

172 (8) impair a real-property interest of a lessee of record in the dominant estate; or

173 (9) impair a recorded real-property interest of any other person in the servient estate or
174 dominant estate.

175 Section 4. Section **57-13c-104** is enacted to read:

176 **57-13c-104. Commencement of civil action.**

177 (1) To obtain an order to relocate an easement under this chapter, a servient estate
178 owner shall commence a civil action.

179 (2) A servient estate owner that commences a civil action under Subsection (1):

180 (a) shall serve a summons and complaint on:

181 (i) the easement holder whose easement is the subject of the relocation;

182 (ii) a security-interest holder of record of an interest in the servient estate or dominant

183 estate;
184 (iii) a lessee of record of an interest in the dominant estate; and
185 (iv) except as otherwise provided in Subsection (2)(b), any other owner of a recorded
186 real-property interest if the relocation would encroach on an area of the servient estate or
187 dominant estate burdened by the interest; and

188 (b) is not required to serve a summons and complaint on the owner of a recorded
189 real-property interest in oil, gas, or minerals unless the interest includes an easement to
190 facilitate oil, gas, or mineral development.

191 (3) A complaint under this section shall state:

192 (a) the intent of the servient estate owner to seek the relocation;

193 (b) the nature, extent, and anticipated dates of commencement and completion of the
194 proposed relocation;

195 (c) the current and proposed locations of the easement;

196 (d) the reason the easement is eligible for relocation under Section [57-13c-102](#);

197 (e) the reason the proposed relocation satisfies the conditions for relocation under
198 Section [57-13c-103](#); and

199 (f) that the servient estate owner has made a reasonable attempt to notify the holders of
200 any public-utility easement, conservation easement, or negative easement on the servient estate
201 or dominant estate of the proposed relocation.

202 (4) (a) At any time before the court renders a final order in an action under Subsection
203 (1), a person served under Subsection (2)(a)(ii), (iii), or (iv) may file a document, in recordable
204 form, that waives the person's rights to contest or obtain relief in connection with the relocation
205 or subordinates the person's interests to the relocation.

206 (b) On filing of the document, the court may order that the person is not required to
207 answer or participate further in the action.

208 Section 5. Section **57-13c-105** is enacted to read:

209 **57-13c-105. Required findings -- Order.**

210 (1) The court may not approve relocation of an easement under this chapter unless the
211 servient estate owner:

212 (a) establishes that the easement is eligible for relocation under Section [57-13c-102](#);

213 and

- 214 (b) satisfies the conditions for relocation under Section 57-13c-103.
- 215 (2) An order under this chapter approving relocation of an easement shall:
- 216 (a) state that the order is issued in accordance with this chapter;
- 217 (b) recite the recording data of the instrument creating the easement, if any, and any
- 218 amendments and any notice under Chapter 9, Marketable Record Title;
- 219 (c) identify the immediately preceding location of the easement;
- 220 (d) describe in a legally sufficient manner the new location of the easement;
- 221 (e) describe mitigation required of the servient estate owner during relocation;
- 222 (f) refer in detail to the plans and specifications of improvements necessary for the
- 223 easement holder to enter, use, and enjoy the easement in the new location;
- 224 (g) specify conditions to be satisfied by the servient estate owner to relocate the
- 225 easement and construct improvements necessary for the easement holder to enter, use, and
- 226 enjoy the easement in the new location;
- 227 (h) include a provision for payment by the servient estate owner of expenses under
- 228 Section 57-13c-106;
- 229 (i) include a provision for compliance by the parties with the obligation of good faith
- 230 under Section 57-13c-107; and
- 231 (j) instruct the servient estate owner to record an affidavit, if required under Subsection
- 232 57-13c-108(1), when the servient estate owner substantially completes relocation.
- 233 (3) An order under Subsection (2) may include any other provision consistent with this
- 234 chapter for the fair and equitable relocation of the easement.
- 235 (4) Before a servient estate owner proceeds with relocation of an easement under this
- 236 chapter, the owner shall record, in the land records of each jurisdiction where the servient
- 237 estate is located, a certified copy of the order under Subsection (2).
- 238 Section 6. Section **57-13c-106** is enacted to read:
- 239 **57-13c-106. Expenses of relocation.**
- 240 A servient estate owner is responsible for reasonable expenses of relocation of an
- 241 easement under this chapter, including the expense of:
- 242 (1) constructing improvements on the servient estate or dominant estate in accordance
- 243 with an order under Section 57-13c-105;
- 244 (2) during the relocation, mitigating disruption in the use and enjoyment of the

- 245 easement by the easement holder or another person entitled to use and enjoy the easement;
246 (3) obtaining a governmental approval or permit to relocate the easement and construct
247 necessary improvements;
248 (4) preparing and recording the certified copy required by Subsection 57-13c-105(4)
249 and any other document required to be recorded;
250 (5) any title work required to complete the relocation or required by a party to the civil
251 action as a result of the relocation;
252 (6) applicable premiums for title insurance related to the relocation;
253 (7) any expert necessary to review plans and specifications for an improvement to be
254 constructed in the relocated easement or on the dominant estate and to confirm compliance
255 with the plans and specifications referred to in the order under Subsection 57-13c-105(2)(f);
256 (8) payment of any maintenance cost associated with the relocated easement that is
257 greater than the maintenance cost associated with the easement before relocation; and
258 (9) obtaining any third-party consent required to relocate the easement.

259 Section 7. Section 57-13c-107 is enacted to read:

260 **57-13c-107. Duty to act in good faith.**

261 After the court, under Section 57-13c-105, approves relocation of an easement and the
262 servient estate owner commences the relocation, the servient estate owner, the easement holder,
263 and other parties in the civil action shall act in good faith to facilitate the relocation in
264 compliance with this chapter.

265 Section 8. Section 57-13c-108 is enacted to read:

266 **57-13c-108. Relocation affidavit.**

267 (1) If an order under Section 57-13c-105 requires the construction of an improvement
268 as a condition for relocation of an easement, relocation is substantially complete, and the
269 easement holder is able to enter, use, and enjoy the easement in the new location, the servient
270 estate owner shall:

271 (a) record, in the land records of each jurisdiction where the servient estate is located,
272 an affidavit certifying that the easement has been relocated; and

273 (b) send, by certified mail, a copy of the recorded affidavit to the easement holder and
274 parties to the civil action.

275 (2) Until an affidavit under Subsection (1) is recorded and sent, the easement holder

276 may enter, use, and enjoy the easement in the current location, subject to the court's order under
277 Section 57-13c-105 approving relocation.

278 (3) If an order under Section 57-13c-105 does not require an improvement to be
279 constructed as a condition of the relocation, recording the order under Subsection
280 57-13c-105(4) constitutes relocation.

281 Section 9. Section **57-13c-109** is enacted to read:

282 **57-13c-109. Limited effect on relocation.**

283 (1) Relocation of an easement under this chapter:

284 (a) is not a new transfer or a new grant of an interest in the servient estate or the
285 dominant estate;

286 (b) is not a breach or default of, and does not trigger, a due-on-sale clause or other
287 transfer-restriction clause under a security instrument, except as otherwise determined by a
288 court under a law other than this chapter;

289 (c) is not a breach or default of a lease, except as otherwise determined by a court
290 under a law other than this chapter;

291 (d) is not a breach or default by the servient estate owner of a recorded document
292 affected by the relocation, except as otherwise determined by a court under a law other than
293 this chapter;

294 (e) does not affect the priority of the easement with respect to other recorded
295 real-property interests burdening the area of the servient estate where the easement was located
296 before the relocation; and

297 (f) is not a fraudulent conveyance or voidable transaction under law.

298 (2) This chapter does not affect any other method of relocating an easement permitted
299 under a law of this state other than this chapter.

300 Section 10. Section **57-13c-110** is enacted to read:

301 **57-13c-110. Nonwaiver.**

302 The right of a servient estate owner to relocate an easement under this chapter may not
303 be waived, excluded, or restricted by agreement even if:

304 (1) the instrument creating the easement prohibits relocation or contains a waiver,
305 exclusion, or restriction of this chapter;

306 (2) the instrument creating the easement requires consent of the easement holder to

307 amend the terms of the easement; or

308 (3) the location of the easement is fixed by the instrument creating the easement,

309 another agreement, previous conduct, acquiescence, estoppel, or implication.

310 Section 11. Section **57-13c-111** is enacted to read:

311 **57-13c-111. Uniformity of application and construction.**

312 In applying and construing this uniform act, consideration shall be given to the need to

313 promote uniformity of the uniform law with respect to the uniform law's subject matter among

314 the states that enact the uniform law.

315 Section 12. Section **57-13c-112** is enacted to read:

316 **57-13c-112. Relation to Electronic Signatures in Global and National Commerce**

317 **Act.**

318 This chapter modifies, limits, or supersedes the Electronic Signatures in Global and

319 National Commerce Act, 15 U.S.C. Sec. 7001 et seq., but does not modify, limit, or supersede

320 Section 101(c) of that act, 15 U.S.C. Sec. 7001(c), or authorize electronic delivery of any of the

321 notices described in Section 103(b) of that act, 15 U.S.C. Sec. 7003(b).

322 Section 13. Section **57-13c-113** is enacted to read:

323 **57-13c-113. Transitional provision.**

324 This chapter applies to an easement created before, on, or after May 4, 2022.

325 Section 14. Section **57-13c-114** is enacted to read:

326 **57-13c-114. Severability.**

327 If any provision of this chapter or the application of the chapter to any person or

328 circumstance is held invalid, the invalidity does not affect other provisions or applications of

329 this chapter that can be given effect without the invalid provision or application, and to this end

330 the provisions of this chapter are severable.